

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.15635 OF 2007

Between:

K.Chiranjeevi Reddy

...Petitioner

AND

Debts Recovery Appellate Tribunal,
Chennai and others

...Respondents

:: ORDER ::

Counsel for the petitioner : Shri V.Venkata Ramana

24th July, 2007

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Per G.S.SINGHVI, C.J.

The petitioner, who gave bid of Rs.28,50,010/- for purchase of land measuring 0.10 acres situated in Town Survey No.282-2C, Ward No.8, Anantapur (hereinafter described as 'the subject land') and in whose favour sale certificate dated 11-1-2007 was issued under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules'), has filed this petition under Article 226 of the Constitution of India for setting aside stay order dated 18-4-2007 passed by the Debts Recovery Appellate Tribunal at Chennai (for short, 'the Appellate Tribunal') in (SARFAESI) – 73/2007.

The Facts:

- 1) Respondent No.3, Sri K. Jayaprakash Reddy took loan of Rs.12,26,000/- from the bank for construction of house. He mortgaged the vacant plot as security for repayment of the loan. Due to failure of respondent No.3 to pay the monthly instalments of loan, the bank issued notice dated 17-10-2005 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and called upon him to pay a sum of Rs.14,01,950/-, which was outstanding as on 31-10-2005. On receipt of notice, respondent No.3 is said to have approached the bank for grant of time to pay the monthly instalments, but the latter did not accept his request and issued notice under Section 13(4) of the Act.
- 2) On 13-2-2006, the concerned officer of the bank issued sale notice under Rules 8(5) and 9 of the Rules and invited tenders for

purchase of the subject land. The reserved price was fixed at Rs.28.00 lakhs and the Earnest Money Deposit (EMD) was fixed at Rs.7.00 lakhs.

- 3) Although the petitioner did not deposit EMD in terms of the notice issued by the bank (he gave EMD of Rs.3.20 lakhs only), the concerned officer entertained his bid of Rs.28,50,010/- and accepted the same.
- 4) On coming to know of the sale notice, respondent No.3 filed an application (S.A.No.12 of 2006) under Section 17 of the Act with the prayer that the proceedings initiated by the bank may be quashed. He also filed I.A.No.166 of 2006 for stay of sale notice 13-2-2006.
- 5) During the pendency of S.A.No.12 of 2006, the bank accepted the offer of the petitioner, but informed him vide letter dated 14-3-2006 that the sale is subject to the petition filed by respondent No.3. Thereupon, the petitioner filed an application dated 8-5-2006 for his impleadment as party to S.A.No.12 of 2006.
- 6) By an order dated 24-10-2006, the Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') allowed I.A.No.166 of 2006 filed by respondent No.3 and directed him to deposit a sum of Rs.3.00 lakhs on or before 20th November, 2006 with the stipulation that if he fails to do so, the application shall stand dismissed.
- 7) In the meanwhile, two sisters of respondent No. 3 filed suit for injunction (O.S.No. 26 of 2006) in the Court of District Judge, Anantapur along with an application for temporary injunction. By an order dated 16-11-2006, the learned District Judge restrained the bank from alienating the suit property in any manner whatsoever. This appears to be the reason why respondent No. 3 did not deposit Rs. 3.00 lakhs in terms of the direction given by

the Tribunal. However, by taking advantage of the deemed dismissal of the application filed by respondent No. 3, the competent authority of the bank issued sale certificate dated 11-1-2007 in favour of the petitioner.

- 8) Respondent No. 3 filed an appeal against the deemed rejection of his application. He also questioned the action of the bank to accept the bid of the petitioner, who was made party before the Appellate Tribunal. The learned Chairperson of the Appellate Tribunal noted that the bank had initiated proceedings for sale of the subject land despite the fact that the injunction granted by District Judge, Anantapur against alienation of the subject land was operative; that even though in terms of the advertisement, the petitioner was required to deposit EMD of Rs. 7.00 lakhs, he had deposited only Rs. 3.20 lakhs; that the bank sold the subject land in derogation of the terms of sale notice and that the appellant (respondent No.3 herein) had taken D.D. of Rs. 5,26,000/- and the same was deposited with the Appellate Tribunal on 23-3-2007 and declared that the stay granted earlier shall remain operative till the disposal of the application pending before the Tribunal. Paragraphs 3, 4 and 5 of the order passed by the Appellate Tribunal read as under:

“3) It appears that the property was brought to sale and despite the interim injunction granted by the Civil Court, the sealed tenders were opened and sale certificate was issued on 11.01.2007. It is also brought to the notice of the Tribunal that the EMD was fixed at Rs.7 lakhs, but whereas the person who had taken the property in the auction has paid only Rs. 3.20 lakhs as EMD and the same is borne out by the affidavit dated 08.05.2006, filed by Kanampalli Chiranjeevi Reddy, the 2nd respondent herein, the I.A No. 334/206 in I.A.No. 166/2006 in SA No. 12/2006, before the DRT, Hyderabad. Despite the fact that the auction purchaser

did not comply with the auction conditions of the sale of the property, it was sold in derogation of the terms and conditions of the sale. This fact was brought to the notice of this Tribunal when the appeal has been moved before this Tribunal on 06.02.2007, and the appellant also brought a DD dt. 03.02.2007, for a sum of Rs. 7 lakhs. The appellant was directed to deposit the said amount with the respondent Bank on or before 12.02.2007, and they have also complied with the same. The appellant also, in order to prove his bonafides, had taken a DD for Rs. 5,26,000/- and brought the same before this Tribunal on 23.03.2007, and he was directed to deposit the said amount also, with the respondent bank in interest earning No. Lien account without prejudice to the rights and contentions of both the appellant and the respondent. The appellant also deposited the said amount. Altogether, the appellant had deposited a sum of Rs. 12,26,000/-.

4) The facts narrated would disclose that the appellant might have been misguided not to deposit the amount in view of the interim order passed by the Civil Court. But, however, the appellant has made out his bonafides by depositing Rs. 7 lakhs when the appeal came up for admission before this Tribunal, though the conditional order passed by the DRT made before this Tribunal. The appellant also made further payments. By the payments made before this Tribunal, the appellant paid more amount than he was directed to pay before the DRT and in the said circumstances, I feel that the appellant must be given an opportunity to prosecute the appeal on merits.

5) In the result, the appeal is allowed. The sale certificate issued in favour of the 2nd respondent is subject to the result of the application/appeal filed by the applicant. But however, the 2nd respondent is at liberty to withdraw the amount, if he is so advised."

Sri V.Venkataramana, learned counsel for the petitioner assailed the impugned order by arguing that the reasons assigned by the Appellate Tribunal for entertaining and accepting the appeal filed by respondent No.3 are irrational and untenable and, therefore, the same is liable to be quashed. Learned counsel emphasised that by virtue of sale certificate dated 11-1-2007, the petitioner has acquired a vested right qua the subject land and he cannot be deprived of his legitimate

right to take possession thereof. Learned counsel pointed out that respondent No.3 had not complied with the conditional order passed by the Tribunal and argued that this should have been treated by the Appellate Tribunal sufficient for refusing to entertain his prayer for stay.

We have given serious thought to the submissions of the learned counsel, but have not felt persuaded to agree with him. A reading of sale notice dated 13-2-2006 issued by the bank makes it clear that those who wanted to participate in purchase of the subject land, were required to furnish EMD of Rs.7.00 lakhs, but the petitioner had furnished EMD of Rs.3.20 lakhs only. Therefore, his tender ought to have been rejected at the threshold. However, the concerned authority not only entertained his tender, but also accepted his bid ignoring the blatant non-compliance of the condition incorporated in notice dated 13-2-2006. It is also not in dispute that the suit for injunction filed by two sisters of respondent No.3 is pending in the Court of District Judge, Anantapur and by an order dated 16-12-2006, the bank was restrained from alienating the subject property in any manner till the disposal of the application and yet, the bank authorities have issued sale certificate in favour of the petitioner. Therefore, we have no hesitation to hold that the Appellate Tribunal rightly stayed further action.

We are further of the view that the discretion exercised by the Appellate Tribunal to stay further proceedings in relation to sale of the subject land does not suffer from any patent illegality or perversity warranting interference under Article 226 of the Constitution of India. When the application filed by respondent No.3 against the sale of the subject land is pending adjudication before the Tribunal, there can be no justification whatsoever to allow the bank to handover possession thereof to the petitioner. Else, the proceedings of the application may become infructuous.

At the cost of repetition, we consider it appropriate to observe that while injunctioning the bank from completing the sale proceedings, the learned Appellate Tribunal has imposed an onerous condition on respondent No.3 to deposit Rs.7.00 lakhs, which the latter had complied. Therefore, the factors like balance of convenience and irreparable injury are also in favour of respondent No.3.

In **Wander Ltd. v. Antox India P. Ltd.**^[1], the Supreme Court considered the circumstances in which the appellate Court can interfere with the discretion exercised by the trial Court to pass an order of injunction and observed:

“Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the ‘balance of convenience’ lies.”

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

In **N.R. Dongre v. Whirlpool Corporation**^[2], the Supreme

Court reiterated the principle laid down in **Wander Ltd. V. Antox India P. Ltd.** (supra) and observed:

“Injunction is a relief in equity and is based on equitable principles. On the above concurrent findings, the weight of equity at this stage is in favour of the plaintiffs and against the defendants. The concurrent findings, on which the grant of interlocutory injunction in favour of the plaintiffs is based is, to say the least, a reasonable conclusion on the relevant material available at this stage. It is not for the Supreme Court at the stage of second appeal to reassess the material and reach an independent conclusion thereon for the first time and it has only to be seen whether the conclusion reached by the trial court was reasonably possible on the material. Moreover, even on a reassessment, it appears that the conclusion reached by the trial Court in favour of the plaintiffs is the one more probable and reasonable on this material.”

In our opinion, the ratio of the above noted judgments is squarely applicable to the facts of this case because while granting stay in favour of respondent No.3, the Appellate Tribunal examined the legality of the proceedings initiated by the bank for sale of the subject land, considered the fact that the petitioner’s tender was accepted ignoring the fatal defect of non-deposit of the required EMD, and that the order of injunction passed by District Judge, Anantapur was operative and held that it is just and proper to protect the subject land. In the facts of this case, it is not possible to find any fault with the approach adopted by the Appellate Tribunal.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP. No.19777 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

24th July, 2007

C.V.NAGARJUNA REDDY, J.

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[\[1\]](#) 1990 (Supp.) SCC 727

[\[2\]](#) (1996) 5 SCC 714